

206

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.32093 of 2020 (O&M)
Date of Decision: 22.02.2021**

RAVINDER KUMAR @ BINDER

.....Petitioner

Vs

STATE OF HARYANA

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. R.S. Mamli, Advocate
for the petitioner.

Mr. Rajat Gautam, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

The case has been taken up for hearing through video conferencing.

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.0137 dated 20.07.2020, registered under Section 376(2)(n) & 506 IPC at Police Station Bilaspur, District Yamuna Nagar.

Allegation is of making forcible relation with the complainant under the threat of killing. Further allegation is that the accused kept on making such relations with the prosecutrix for three years. Having fed up with such activities, the

complainant informed her husband, who had moved an application on 15.06.2020 against the petitioner and got recorded his statement. The complaint was ultimately withdrawn. After two days of such incident, the petitioner again involved himself in doing obscene act with the complainant, resulting in lodging the present FIR.

Learned counsel for the petitioner made a reference to the complaint dated 15.06.2020 made by the husband of the complainant Kulwant Singh to the SHO, P.S. Bilaspur, District Yamuna Nagar in which the husband of the complainant made allegations against the complainant and the petitioner in the context of their illicit relations. He made a prayer before the Police that his life was under danger at the hands of his wife and the petitioner and, therefore, the same be protected. Statement of the complainant was recorded on 17.06.2020, wherein she stated that the allegation of her husband are false. The complaint of the husband of the complainant was in order to pressurize the complainant to proceed falsely against the petitioner. The complaint was ultimately withdrawn by the husband of complainant by making statement before the Police. Even the wife of the petitioner made representation before the Sr. Superintendent of Police for fair and proper investigation in the present case and for cancellation of FIR.

Name of wife of the petitioner is also Reena. Earlier petitioner filed CRM-M No.24390 of 2020 for grant of anticipatory bail in the High Court. The said petition was dismissed vide order dated 26.08.2020 with the following observations:-

“After hearing counsel for the parties, this Court is put in a piquant situation where the complainant, even at the risk of financial burden, is asserting that the petitioner has made a videography of a sexual act with the complainant, in which even the petitioner is seen having sex with the complainant, whereas, on the other hand, the petitioner has totally denied any such allegation; and has vehemently asserted that since he was never involved in any incident of sexual act with the complainant, therefore, there is no question of any videography being with him or involving him. Accordingly, on the one hand, it is the interest of investigation of heinous crime of rape and on the other hand, there is a question of reputation and liberty of a citizen who claims himself to be totally innocent and who is asserting that the complainant has lodged the present complaint against him under the pressure of her in-laws and her husband; despite ruling out any such incident in her statement made to the police, as late as, only on 17.06.2020. Therefore, this Court has to balance the rights and interest of both the sides.

Since the prosecution has alleged that there is a videography of sexual act, wherein, even the petitioner is seen, therefore, the prosecution would be required to recover such a videography, if at all the same is in existence. Hence, this Court is not inclined to grant concession of anticipatory bail to the petitioner. Accordingly, the prayer for anticipatory bail to the petitioner is declined.

However, this Court finds substance in the argument of the counsel for the petitioner that even the complainant herself

had ruled out any such incident in her statement made to the police on 17.06.2020 only, therefore, his reputation should not be made to suffer for the sadistic pleasure of the complainant or her in-law. Once he is arrested for this heinous crime then his reputation cannot be reclaimed.

Accordingly, it is ordered that if any videography is not recovered from the petitioner during the custodial interrogation or if the police claims to have recovered any such video in which the petitioner is not clearly recognizable, then the petitioner shall be entitled to a compensation of Rs.5 Lacs from the complainant and her husband; both; jointly. Besides this, the petitioner would also be at liberty to launch prosecution against the complainant for lodging the complaint with false assertions. However, this direction qua compensation is passed only qua veracity of assertion qua videography. This shall not affect the merits of the trial, if any, on the basis of the assertion other than the claim of videography.

In terms of the above, the present petition is disposed of.”

A reply by way of affidavit of Rajender Kumar, HPS, Deputy Superintendent of Police, Jagadhri, District Yamuna Nagar has been filed. The same is silent with regard to the alleged videography recovered by the Police.

Learned counsel for the petitioner further submitted that there is no reference of recovery of videography in the present case.

Learned State counsel on instructions from SI Balbir Singh also admitted that no videography as alleged by the prosecutrix has been recovered by the Police. Petitioner is in

custody since 27.09.2020 and no prosecution witness has been examined so far after framing of charges.

In view of aforesaid facts and circumstances and in view of the situation arising out due to COVID-19 pandemic, I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

February 22, 2021

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No